

Race Discrimination: Court Gives Employers More Latitude To Make Decisions.

The facts were very straightforward in a recent race-discrimination case from the US District Court for the Southern District of Georgia.

An African-American registered nurse who worked the night shift on one unit applied for a transfer to the day shift on another unit. The transfer would have changed her hours and upgraded her status from staff nurse to case manager.

It was not disputed that the African-American nurse was more qualified for the position and that she was not chosen. It was given to a Caucasian nurse with two years less total nursing experience.

Applicant Did Not Show Interest and Enthusiasm

The court accepted the reasons given by the hospital for not choosing the African-American applicant. She, unlike the Caucasian applicant, did not demonstrate interest and enthusiasm for the position and lacked clarity, confidence and authority in her telephone voice.

The court looked at the large volume of US legal case precedents which define the analytical steps the courts take in determining whether or not race discrimination has occurred. In many cases, like this one, there no doubt that a fully-qualified minority has been treated differently. The question is whether race was the real motivation as opposed to some legitimate reason.

An employer can defend against allegations of discrimination by offering the court a legitimate, non-discriminatory reason. The court must decide if it is legitimate and non-discriminatory or just a pretext for discrimination.

The court looked at new case law in the Federal circuit courts on the issue of pretext saying that the court only looks at whether the employer's legitimate, non-discriminatory reason is "unworthy of credence." That is a more employer-friendly standard than has been used before. **Cone v. Health Management Assoc., Inc.**, 2007 WL 1702867 (D. Ga., June 11, 2007).

Race discrimination cases rarely involve direct evidence of discrimination.

Circumstantial evidence is most often the deciding factor in these cases.

The victim has a case if the victim is a minority, was qualified and was treated differently than a less qualified non-minority.

The minority may have been treated differently based on his or her race, or based on legitimate, non-discriminatory reasons.

The court has to decide if the legitimate, non-discriminatory reason the employer has offered is really legitimate and non-discriminatory or merely a pretext for discrimination.

The case law is now saying that the court does not second-guess the employer's reasoning process.

Instead, the court looks to see if the reason the employer has given to justify its choice is "unworthy of credence."

Only if the employer's explanation is inherently unbelievable will the court throw it out and rule that discrimination has occurred.

UNITED STATES DISTRICT COURT
GEORGIA
June 11, 2007
